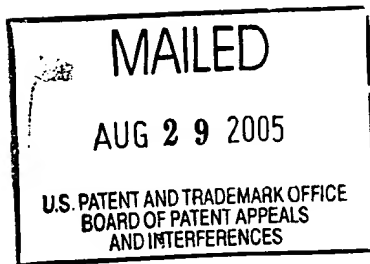


The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GERT BERG

Appeal No. 2005-1532
Application No. 09/619,510

ON BRIEF

Before KIMLIN, WARREN and WALTZ, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-3 and 5-12. Claim 4 stands objected to by the examiner. Claim 1 is illustrative:

1. A latch of the sliding-action slam type for installation in an opening in a door panel for releasably retaining the door panel relative to a frame, the latch being moveable between a closed position and an open position when installed in the opening in the door panel, the latch comprising

a) a plate, the plate being positioned above the door panel when the latch is mounted in the opening;

b) a latch body extending under the plate and through the opening in the panel when the latch is mounted in the panel, the

Appeal No. 2005-1532
Application No. 09/619,510

latch body forming a central well, the well extending through the plate, and

c) an actuator extending from the latch body for releasably engaging the frame; the actuator being accessible through the central well, the actuator including an integrally formed spring means for biasing the actuator, the actuator travelling from a closed to an open position when the latch is operated against the bias of the spring means.

In the rejection of the appealed claims, the examiner relies upon the following references:

Raffman	2,878,389	Mar. 17, 1959
Bisbing et al. (Bisbing)	3,841,674	Oct. 15, 1974
Malmanger et al. (Malmanger)	5,358,291	Oct. 25, 1994

Appellant's claimed invention is directed to a latch that is installed in the opening of a door panel which allows the door to be releasably retained in the door frame. The latch comprises, inter alia, a body forming a central well and an actuator that extends from the body for releasably engaging the door frame. The actuator includes an integrally formed spring means for biasing the actuator in favor of the closed position.

Appealed claims 1, 2 and 5-12 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Malmanger. Claims 1, 2 and 5-7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bisbing. Also, claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Malmanger in view of Raffman.

Appeal No. 2005-1532
Application No. 09/619,510

We have thoroughly reviewed the respective positions advanced by appellant and the examiner as represented in appellant's Brief and Examiner's Answer, respectively, in reaching our decision.

We will sustain the examiner's rejection under 35 U.S.C. § 102(b) of claims 1, 2 and 5-12 over Malmanger for essentially those reasons expressed by the examiner, which we incorporate herein. Malmanger, like appellant, discloses a latch for installation in an opening in a panel that comprises a plate 18, a latch body 109, an actuator 110, front pleat 107, 108, rear pleat 110, 114, middle section 112, a pawl 116, and spring means 114 (see Figure 5). Appellant contends that the actuator of Malmanger does not include the claimed spring means because "separate biasing means 114 are provided" (page 8 of Brief, first paragraph). However, we fully concur with the examiner that spring means 114 of Malmanger is integral with the reference actuator 110 to the same extent disclosed in the present specification (note that elements 114 and 110 have the same cross hatching). As stated by the examiner, "[t]he spring means 114 and pawl 122 of Malmanger is part of the same element [and] . . . the pawl 60 and the spring means 100, 110 of the instant

invention are integral in the same manner" (paragraph bridging pages 3 and 4 of Answer).

Appellant also maintains that "the 'actuator' 110 does not releasably engage the frame. This function is provided by the 'latch' 122" (id.). However, Figure 5 of Malmanger clearly depicts actuator 110 and a latch 122 to be part of the same element, as is pawl 116.

Regarding separately argued claim 2, we agree with the examiner that plate 18 of Malmanger "contacts the frame 19 and prevents movement of the door in the same manner as the plate 30 of the instant invention" (page 4 of Answer, second paragraph).

As for separately argued claim 5, appellant argues that the pawl 116 of Malmanger "does not engage the underside of the frame 20, but rather a retaining groove 122 formed in the sidewall of the downwardly extending portion of the frame" (page 9 of Brief, penultimate paragraph). However, we agree with the examiner that "[t]he retaining groove 122 is under the body of the frame 19" (page 4 of Answer, third paragraph). It can be seen in Figure 2 of Malmanger that elements 19 and 20 are part of the same frame.

In an argument for separately argued claim 7, appellant states that "the 'actuator' in Malmanger does not include a rear section that extends from the back of the latch" (page 10 of

Brief, third paragraph). The examiner correctly points out, however, that the claim does not require that the rear section of the actuator be attached to the latch. It is clear from reference Figure 5 that elements 120 and 114, which make up the actuator, extend from the back of the latch.

As for separately argued claim 9, appellant contends that, in Malmanger, "there is no middle section with a rear pleat and a forward pleat, with each pleat comprising a pair of generally planar walls extending downwardly from [sic, from] a respective top portion" (page 11 of Brief, fourth paragraph). We fully concur with the examiner, however, that walls 107 and 108 of Malmanger define the forward pleat whereas walls 110 and 114 define the rear pleat, with section 112 being a middle section.

Concerning claim 10, we find no error in the examiner's finding that the rear pleat of Malmanger "includes the spring means 114 which by definition is flexible" (page 5 of Answer, second paragraph). Also, appellant's argument with respect to claim 11 is refuted by the examiner's identification of the rear pleat which is composed of the spring means.

We will not sustain the examiner's rejection of claims 1, 2 and 5-7 under 35 U.S.C. § 102(b) over Bisbing. As noted by appellant, the examiner has misidentified element 19 of Bisbing

Appeal No. 2005-1532
Application No. 09/619,510

as a latch body and element P as a plate of the latch. Bisbing specifically describes element 19 as a finger cavity and P as the door panel in which the latch is mounted. Accordingly, we subscribe to appellant's position that "Bisbing simply discloses too few structural elements to meet the limitations of independent claim 1" (page 15 of Brief, penultimate paragraph). We note that the examiner, at page 6, does not address the specific arguments of appellant.

Turning to the rejection of claim 3 under § 103(a) as being unpatentable over Malmanger and Raffman, appellant has not rebutted the examiner's reasoned conclusion that it would have been obvious for one of ordinary skill in the art to employ a camming means, as taught by Raffman, in order to guide the latch of Malmanger and "to allow for smooth motion and preventing the latch from binding due to unintended movement" (page 3 of Final rejection, first paragraph). In response to appellant's argument that there would have been no motivation to modify Malmanger in accordance with Raffman, the examiner persuasively sets forth that "[e]ven if the cam 87 of Raffman was directed [sic, directly] applied (and not just its teaching which is the proper standard) it would prevent the latch system of Malmanger from motion that [is] perpendicular to the intended motion (parallel

Appeal No. 2005-1532
Application No. 09/619,510


to the door panel)" (page 6 of Answer, last paragraph). Also, we note that appellant bases no argument with respect to the § 103 rejection based on evidence of nonobviousness, such as unexpected results.


In conclusion, based on the foregoing, the examiner's § 102 rejection over Malmanger is affirmed, the examiner's § 102 rejection over Bisbing is reversed and the examiner's § 103 rejection of claim 3 is affirmed. Accordingly, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED


EDWARD C. KIMLIN)
Administrative Patent Judge)


CHARLES F. WARREN)
Administrative Patent Judge)


THOMAS A. WALTZ)
Administrative Patent Judge)

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Appeal No. 2005-1532
Application No. 09/619,510

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